

Cambodia: Building a Legal System from Scratch**

In 1975, the Khmer Rouge destroyed the Cambodian legal system.¹ Legislators, prosecutors, judges, lawyers, and law professors were killed or forced to flee the country. Law books were destroyed and the buildings that had housed the courts and the law school were converted to other uses. At the end of the destruction and the massacres, an estimated six to ten legal professionals remained alive in Cambodia.

The situation has improved only slightly since then. Cambodia now has laws, but they are few and far between. The country has established courts, but most of them are barely functioning. Likewise, persons have been appointed judges and prosecutors, but few of them are educated in the law. In one respect, the situation has deteriorated even further; because of attrition due to death, the number of fully trained legal professionals now present in Cambodia has declined to five. Moreover, Cambodia has no private lawyers.

*Professor of Law, University of San Francisco School of Law. A.B., Stanford University (1967); J.D., Stanford University School of Law (1970). The author spent two and one-half months in the fall of 1991 in Phnom Penh, Cambodia, and in United Nations Refugee Camp Site 2 on the Thai-Cambodian border gathering the major part of the information on which this article is based. She returned to Cambodia in September of 1992. The author thanks Run Saray for his translation of Khmer laws.

**This article is based on material contained in the book by DOLORES A. DONOVAN, ET AL., *REBUILDING CAMBODIA: HUMAN RESOURCES, HUMAN RIGHTS AND LAW* (1992).

1. The Cambodian people refer to themselves as the Khmer. The Khmer Rouge are the "red Khmer," the Communist faction that controlled Cambodia during the years 1975-1979. Espousing the political tenets of radical Marxism-Leninism-Maoism, they sought to remove all vestiges of modern Western civilization from Cambodia in order to create in Cambodia an agrarian Communist utopia. In the process of purging Cambodia of all Western influence, the Khmer Rouge killed or caused the deaths by starvation of an estimated eight hundred thousand to one million Cambodians. The total Cambodian population immediately prior to the Khmer Rouge massacres was approximately seven million. See generally ELIZABETH BECKER, *WHEN THE WAR WAS OVER* (1986); NAYAN CHANDA, *BROTHER ENEMY: THE WAR AFTER THE WAR* (1986); KAMPUCHEA: *DECADE OF THE GENOCIDE* (K. Kiljunen ed., 1984); MICHAEL VICKERY, *CAMBODIA 1975-1982* (1984); DAVID P. CHANDLER, *THE TRAGEDY OF CAMBODIAN HISTORY: POLITICS, WAR AND REVOLUTION SINCE 1945* (1992).

The present Phnom Penh regime has devoted some, but not enough, effort to restoring the legal system devastated by the Khmer Rouge in 1975. The laws, courts, and judges referred to above are the product of that effort. However, lack of personnel and of money, compounded by conflict within the Phnom Penh Government between democratic reformers and old-line socialists, has prevented significant progress.

The rebuilding of the Cambodian legal system will require a major governmental effort in the realms of legislation and administration of justice. The absence of human and financial resources and the need for redefinition of values at the fundamental levels of political ideology and legal culture will hamper reconstruction in these two realms. For example, the legislation on the books in Cambodia is not only sparse, but also socialist in orientation. Likewise, the absence of trained personnel and the cultural norms of dispute resolution, which stress mediation by community-based authority figures rather than decision by courts of law, complicate the administration of justice in Cambodia.

I. History

The Cambodian legal system derives from the ancient Asian model of community-based nonadversarial dispute resolution through conciliation. The French, whose midnineteenth century arrival in Cambodia is relatively recent when viewed against the backdrop of a Cambodian civilization flourishing in the ninth century A.D., superimposed a French-style formal legislative and judicial system on the preexisting Khmer conciliation system. This French system, which was retained after Cambodia's declaration of independence from France in 1945, was destroyed by the Khmer Rouge in the period from 1975 to 1979. The traditional conciliation system also disintegrated during these years, as did all of Khmer society. However, in recent times, as Khmer communities have re-formed, conciliation has once again begun to flourish.

In late 1979, the Vietnamese and their Cambodian allies, Khmer Rouge commanders who had defected to Vietnam, invaded Cambodia, ousted the Khmer Rouge, and installed the Government of the People's Republic of Kampuchea (PRK). In 1980 that government began to rebuild a formal court system. Because the PRK, like many socialist regimes, devalued law, it was slow to rebuild the legal system generally and to restore legal education in particular. The few laws the PRK enacted and courts that it created bore the imprint of Soviet concepts of socialist legality.²

In the late 1980s, the Cambodian Government changed its name to State of Cambodia (SOC) and designated Hun Sen as its prime minister. Since that time,

2. For discussions of socialist legality, see HAROLD J. BERMAN, *JUSTICE IN THE U.S.S.R.* 13-170 (1950); WILLIAM E. BUTLER, *SOVIET LAW* 26-38 (1983); SHAOCHUAN LENG & HUNGDAH CHIU, *CRIMINAL JUSTICE IN POST-MAO CHINA* 9-28 (1983); Dolores A. Donovan, *The Structure of the Chinese Criminal Justice System: A Comparative Perspective*, 21 U.S.F. L. REV. 229, 289-91 (1987).

the reformist faction within the present Phnom Penh regime has made serious and substantive efforts to create a functioning legislative and judicial system. Unfortunately, those efforts have been frustrated by lack of resources and by conflict between the liberal reformers in the Ministry of Justice and persons in and connected with the Ministries of Interior and National Security who effectively resist establishment of the rule of law in Cambodia. As a result, Cambodia's legal system is the least developed aspect of its political and economic structure.

On October 23, 1991, the four warring Cambodian factions, that had for twenty years kept the nation in the throes of civil war, signed a peace agreement brokered by the five permanent members of the United Nations Security Council.³ These Paris Agreements committed the four factions, three of which had, until October of 1991, espoused various forms of socialism, to the establishment of a liberal democratic political regime that will include a market economy, a multiparty political system, an independent judiciary, and protection for basic individual human rights. Free elections, monitored by the United Nations, are scheduled for May 1993 to select a National Assembly that will write a new constitution.

Until the elections of 1993, the question of who controls Cambodia's government is not clear. The State of Cambodia, the Hun Sen regime, controls almost all of the governmental institutions that exist inside Cambodia. For all practical purposes, then, the Hun Sen regime is the government of Cambodia.

However, by means of the Paris Agreements, the international diplomatic community has placed two nonindigenous governmental institutions at the head of Cambodia's internal political and legal system. The first of these is the Supreme National Council (SNC), in which Cambodia's sovereignty reposes until elections in 1993. The second is the United Nations Transitional Authority in Cambodia (UNTAC), which has been assigned the task of monitoring and assisting Cambodia's transition to democracy.

The institutions have, at least until 1993, a form of legislative competency that is potentially very broad. The Supreme National Council, headed by Prince Sihanouk and composed of representatives of all four factions, has delegated to UNTAC all powers necessary to ensure the implementation of the Paris Agreement.⁴ Thus, in consultation with the SNC, UNTAC has the power to

3. The four Cambodian political factions at present vying for control of Cambodia are: (1) the government of the State of Cambodia, also known as the Hun Sen regime or the Phnom Penh regime; (2) the Sihanoukists, sometimes referred to by the French acronym FUNCINPEC; (3) the Khmer People's National Liberation Front (KPNLF); and (4) the Khmer Rouge (KR). Until October of 1991 these factions were at war, with the government of the State of Cambodia, backed by Vietnam and the Soviet Union, ranged against the tripartite alliance of the KPNLF, supported by the United States, the Khmer Rouge, armed by China, and the Sihanoukists, who had no real existence as a fighting force. Of these four, only the KPNLF had espoused liberal democracy prior to the signing of the Paris Agreements in 1991. The sincerity of the KPNLF's commitment to democracy has been questioned by those who accuse its leaders of warlordism and banditry.

4. *Paris Conference on Cambodia: Agreements Elaborating the Framework for a Comprehensive Political Settlement of the Cambodia Conflict*, Part I, art. 6, U.N. Doc. A/46/608 (1991); *Id.* § (a)1, annex 1 (UNTAC Mandate).

supervise the police "and other law enforcement and judicial processes throughout Cambodia" to the extent necessary to ensure the maintenance of law and order and the protection of human rights and freedoms.⁵

II. Legislation

Cambodia is at present a society governed almost exclusively by the executive branch of government, through the medium of executive decrees⁶ and regulations. The number of actual pieces of legislation duly enacted by the legislature before promulgation by the executive branch is very few. Major areas of Cambodian life, for example, substantive criminal law⁷ and ownership of property,⁸ which in most other countries would be governed by legislative enactments, are largely controlled by decrees and by regulations issued by the ministries with immediate supervisory responsibility over the issue in question. This absence of legislation and consequent reliance on ministerial-level officials for decision making, which in other societies would fall within the purview of the more publicly visible legislative process, is in no small part responsible for the many allegations of corruption levied against the executive officers of the current government.

The major pieces of legislation are few in number and have not, with the exception of the Law on Foreign Investment, been translated into English.⁹ Until 1992, when a spate of legislation appeared, the central legislative enactments of the State of Cambodia, like the number of fully trained lawyers, could have been counted on the fingers of one hand. These pre-1992 enactments included the law creating courts and prosecutors (1982),¹⁰ the law creating the Supreme Court and

5. *Id.* annex 1, sec. (b) (Civil Administration), ¶¶ 5(b), 6.

6. Article 60(2) of the 1989 Constitution of the State of Cambodia provides that the Council of State has the duty of issuing decrees. Article 62 of the Constitution provides that the Chairman of the Council of State is the supreme commander of the Cambodian People's Armed Forces and Chairman of the National Defense Council. For an English translation of the 1989 Constitution of the State of Cambodia, see CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz eds., 1989) [hereinafter CONSTITUTIONS].

7. Substantive criminal law is contained in the twelve short articles of Decree No. 2, issued by the People's Republic of Kampuchea (PRK) in 1980. Decree No. 2, in rough translation, is in the author's files.

8. The two authoritative pronouncements on the right of land ownership are to be found in the 1989 Constitution of the State of Cambodia, which provides that Cambodians have the right to own, to use, and to inherit land, and the 1992 Law of Real Property. For a description of the land law, see *infra* note 13 and accompanying text. See also CAMBODIA CONST. art. 15 (release BK060507089, 1300 GMT May 5, 1989). For an English translation, see CONSTITUTIONS, *supra* note 6. Further, "[t]he right to own and use land will be defined by a separate law." CAMBODIA CONST. art. 17 (1989).

9. The Foreign Investment Law of 1989 was translated into English by Phat Mau, under the supervision of H. Lawrence Serra, Esq. This translation appears in 12 EAST ASIAN EXECUTIVE REPS., No. 10, Oct. 15, 1990. For a discussion of the Foreign Investment Law, see H. Lawrence Serra, *Cambodia's Foreign Investment Law*, 12 EAST ASIAN EXECUTIVE REPS., No. 9, Sept. 15, 1990, at 10; H. Lawrence Serra, *Cambodia's Law on Foreign Investment*, CAL. ST. B. INT'L L. SEC. NEWSL., Fall 1990, at 4. Inquiries in Phnom Penh as to whether any Cambodian legislation has been translated into French were repeatedly answered in the negative.

10. A rough translation is in the author's files.

the Office of the Attorney General (1985),¹¹ the Law of Marriage and the Family (1989),¹² and the Foreign Investment Law (1989).

The most significant piece of legislation that appeared in 1992 was the Law of Real Property. This land law formally established the principle that real property can be individually and privately owned. The theory of private ownership is that the State of Cambodia, which is the true and original owner of all land in Cambodia, has chosen to divide the land and give it to the people for their private enjoyment, so that they may leave it to their children or sell it. Pursuant to this theory, claims to ownership in land having their origin in the pre-1979 period are not recognized by the State of Cambodia. The overseas Khmer who fled the Khmer Rouge, leaving their land and homes behind, are thus dispossessed.¹³

Following close on the heels of the land law in terms of importance to the Cambodian economy was a labor code, which governs the rights and obligations of employers and employees. This 1992 statute regulates labor unions, establishes the duties of employers to their workers, assigns responsibility for injuries in the workplace, and regulates dangerous work, such as that in mines.¹⁴

Analysis of those pieces of legislation that are either fully or partially translated reveals a strong bias in favor of concepts characteristic of socialist legality, most prominently those requiring a command economy. However, even the present legislation could, with relative ease, be fine-tuned to reflect legal norms compatible with the values of liberal democracy. For example, the dominant distinction between socialist law and capitalist law in the economic area is the degree to which state intervention in the economy is permitted.¹⁵ Existing legislation could quite easily be amended to reflect measures already taken by the present Cambodian Government to move away from the central planning that has heretofore characterized Cambodian economic management. The successor Cambodian Government, to be installed after the U.N.-supervised elections of 1993, will almost certainly move even further in the direction of the market economy mandated by the Paris Agreements. Legislation enacted by the successor government can be expected to reflect that economic goal.

The small number of laws on the books makes the enactment of legislation a matter of the highest priority, rivaled only by the need to educate and field enough legal professionals to render Cambodia's legal system operational. The choices

11. *Id.*

12. A rough translation of the Law on the Marriage and the Family is in the author's files. A Decree Law on Contract and Civil Responsibility was promulgated by the State of Cambodia in 1988.

13. Interview with Phet Phanur, Procurator General, and Choeun Senlang, Deputy Director of the Department of Civil Affairs, Office of the Procurator General (Sept. 8, 1992). Choeun Senlang, who described the contents of the Law of Real Property to the author, completed three years of law study at the University of Phnom Penh prior to the advent of the Khmer Rouge. A Khmer-language version of the 1992 Law of Real Property is in the author's files.

14. *Id.*

15. See generally John Quigley, *Socialist Law and Civil Law Tradition*, 37 AM. J. COMP. L. 781, 803-05 (1989).

between socialist and democratic legal institutions are most clearly defined in the area of legislation. The critical organizational, substantive, and procedural choices now confronting the Cambodian Government must be made in the very near future.

III. The Administration of Justice

The relationship between the judicial and the executive branches of government in Cambodia is, as in most socialist countries, a close one. Pursuant to the theory of unity of powers that is central to socialist political and legal theory,¹⁶ the Ministry of Justice (a division of the executive branch) is charged with supervising the administration of justice in Cambodia.¹⁷ Neither the courts of first instance nor the Supreme Court have the power to interpret laws and executive decrees or the power to review them for constitutionality. Those powers are reserved to the Standing Committee of the National Assembly,¹⁸ which is dominated by officers of the executive branch of government. If Cambodia is to achieve its desired transition to a liberal democratic political and legal system, a high priority in the next few years must be development of an understanding of both the need for an independent judiciary and the practical implications of the theory of separation of powers.

The Cambodian legal profession consists of judges, prosecutors, and law teachers. The country has no private lawyers. The Ministry of Justice officials who created the concept of lay defenders attached to each court intended those defenders to evolve into a corps of private lawyers who would handle both civil and criminal cases. To date, that evolution has not occurred.

The total number of judges now on the bench in Cambodia falls into the range of seventy to ninety.¹⁹ For the most part, the judges are persons with a high school education or a year or two of university level education who successfully completed a three- or five-month law course offered by the Institute of Public Administration and Law between 1982 and 1989.²⁰ Nine justices, two of whom

16. MAURO CAPPELLETTI, *JUDICIAL REVIEW IN THE CONTEMPORARY WORLD* 7 (1971); MAURO CAPPELLETTI & WILLIAM COHEN, *COMPARATIVE CONSTITUTIONAL LAW* 21-23 (1979); Donovan, *supra* note 2, at 274-75.

17. Interview with Chhour Leanghuot, Director of Legal Education, Ministry of Justice (Oct. 14, 1991). Also present at this interview was Prak Sarin, Director of International Relations and Protocol, Ministry of Justice.

18. CAMBODIA CONST. art. 49/2 (1989). For an English translation, see *CONSTITUTIONS, supra* note 6.

19. The precise number of judges could not be ascertained due to the uncertainty of persons interviewed as to the number of judicial positions unfilled. The same is true of procurators.

20. In 1989, the Institute of Public Administration and Law began to offer a two-year law course. The few graduates of the two-year course appear to have been assigned to government ministries rather than to the courts. In the fall of 1992, a four-year course began, replacing the two-year program. This four-year program in the study of law will eventually become part of the University of Phnom Penh. Graduates will receive the *license en droit*, the equivalent of a B.A. in law.

received training in law in the pre-Khmer Rouge era, sit on the Supreme Court. They are, on the whole, far better educated than their colleagues in the courts of first instance.

The Cambodian court system is unusual in that it comprises only two tiers of courts, the courts of first instance and the Supreme Court.²¹ The right of appeal to the Supreme Court is nonexistent. Thus, although several mechanisms for discretionary review by the Supreme Court exist, technically the Cambodian court system is without a right to a hearing on appeal.²² The omission of a right to appeal is the result of the virtually complete absence of law-trained personnel capable of handling appeals and of the governmental desire for speed and efficiency in the resolution of disputes.

Every province in Cambodia, the city of Kompong Cham, and the city of Phnom Penh has a court of first instance. Only the court of Phnom Penh, which claims to have handled a total of 934 cases in the year 1990, on a population base of 800,000,²³ is processing a caseload in any way comparable to a court in an equivalent Asian jurisdiction. In contrast, the provincial court of Kompong Speu, a rural province with a population of 407,747, handled only thirty-six cases in 1990.²⁴ Even after discounting for the reduction in litigation necessarily present when a population is non-Westernized²⁵ and lives in a rural setting, thirty-six is a number so low as to lead to the conclusion that the Kompong Speu court exists mainly on paper.

Attached to each court of first instance is a group of "people's assessors" and a group of "social defenders." These persons hold nonlegal full-time jobs. When a case comes to trial, two people's assessors are selected to sit on the case with one judge. The three decide the case by majority vote.²⁶ If the possible sentence

21. Interview with Prak Sok, Vice-President of the Supreme Court (Oct. 11, 1991); interview with Nup Sophon, First Vice-President of the City Court for Phnom Penh (Oct. 19, 1991). Also present at the interview with Nup Sophon were Chen Chiva, Deputy Procurator for the City Court for Phnom Penh, and Peou Pech, Director of Administration for the City Court for Phnom Penh.

22. Interview with Prak Sok, Vice-President of the Supreme Court (Oct. 11, 1991). UNTAC has recommended the creation of a court of appeal and the Cambodian factions, with the exception of the Khmer Rouge, have agreed to the UNTAC proposal.

23. Interview with Nup Sophon, First Vice-President of the City Court for Phnom Penh (Oct. 19, 1991).

24. Interview with Pol Vorn, President of the Provincial Court for Kompong Speu Province (Oct. 16, 1991). Also present at the interview were Vice-President of the Court Phang Samon, Judge Keo Cheng, and Procurator Ven Yoeun. These statistics, and those given by the Phnom Penh City Court and the Kandal Province Court, were hastily provided on the basis of handwritten records kept by judges and procurators. Hence, they may not be reliable. No official court statistics appear to exist for the year 1990. Some courts claimed to be developing official statistics for the year 1991.

25. The low incidence of litigation in Japan is a case in point. See generally Takeyoshi Kawashima, *Dispute Resolution in Contemporary Japan*, in *LAW IN JAPAN* 39 (Arthur Von Mehren ed., 1963). But see John O. Haley, *The Myth of the Reluctant Litigant*, 4 *J. OF JAPANESE STUDIES* 359 (1978); J. Mark Ramseyer, *Reluctant Litigant Revisited: Rationality and Disputes in Japan*, 14 *J. OF JAPANESE STUDIES* III (1988).

26. Law of Criminal Procedure arts. 28, 62 (1989) (in rough translation in the author's files).

in a criminal case is more than five years, one of the social defenders will, in theory, be appointed to represent the accused person.²⁷

Each court of first instance sits at the apex of a pyramid of conciliation offices staffed by persons called "justice representatives" who conciliate disputes. Although a decision is appealable from the conciliation offices to the courts of first instance, the vast majority of Cambodian disputes are resolved within the conciliation framework, without recourse to the courts of law.²⁸

The conciliation²⁹ process is the heart of the Khmer legal system. Resolution of disputes by conciliation is found everywhere in Cambodian society, both inside and outside of the court system. One can fairly say that Cambodia has two legal systems: a formal legal system built around the courts, and an informal one built around conciliation, with the latter only loosely attached to the state.³⁰

The state conciliation process operates at three levels. Conciliation begins at the village level, where it is conducted by village chiefs, monks, or by a justice representative³¹ who is a state employee, and sometimes by all three at once.³² Regardless of who carried out the village-level conciliation, the parties possess an informal right of appeal to the next administrative level, the commune or *khum*. From the commune, appeal can be made to the district or *srok*; and from the district, to the provincial court of first instance.³³ Even the judges of the courts

27. Law of Criminal Procedure art. 30 (1989) (in rough translation in the author's files).

28. The disparity in the caseloads of the conciliation system and the courts of first instance is revealed by comparison of the number of conciliation system personnel with judicial personnel in the city of Phnom Penh. The Phnom Penh jurisdiction has eighty-eight conciliators and six judges. Interview with Nup Sophon, First Vice-President of the Phnom Penh City Court (Oct. 19, 1991).

29. The word "conciliation" is the English translation of the French word "*reconcilier*," used by French-speaking Khmer in Phnom Penh to describe the form of alternative dispute resolution characteristic of Khmer society. English-speaking Khmer in United Nations Refugee Camp Site 2, on the Thai-Cambodian border, use the English words "conciliation" and "to reconcile" to describe the Khmer form of alternative dispute resolution. The Khmer word for the process by which a person in authority resolves a dispute is, phonetically rendered in the Western alphabet, "*kar phsas*."

30. The factual information and conclusions relating to the Cambodian conciliation system are derived from two interviews. See Interview with Pang Kan, Deputy Justice Representative for the rural district surrounding the town of Kompong Speu in the province of Kompong Speu (Oct. 16, 1991) (also present was Ouch Samoeun, a member of the district People's Committee); Interview with Am Roeun, Justice Representative for *khan* Daun Penh, in the city of Phnom Penh (Oct. 19, 1991) (also present was his secretary, Deputy Justice Representative Lim Peng).

31. The state employees who perform the conciliation function are called justice representatives at all levels of the system.

32. Extrajudicial conciliation is reportedly also found in factories and large offices, where it is carried out by a supervisor or other person in authority.

33. The urban districts of the city of Phnom Penh are called *khan*, and the neighborhoods into which they are divided *sangkat*. In the fall of 1991, Phnom Penh was divided into four urban *khans* and three suburban *sroks*, each with a justice representative and a secretary. The *khans* were in turn divided into *sangkats*, each with a justice representative, and the *sroks* into *khums*, each with a justice representative, for a total of seventy-seven *sangkat/khum* justice representatives. When added to the seven *khan/srok* justice representatives and their secretaries, who also conduct conciliation sessions, a total of eighty-eight persons are involved in conciliation work in the jurisdiction of Phnom Penh. In contrast, only six judges are assigned to the court of Phnom Penh. Interview with Nup Sophon, First Vice-President of the City Court of Phnom Penh (Oct. 19, 1991).

of first instance are required to attempt, at least once, to conciliate the cases that come before them, whether the cases are on appeal from the conciliation system or filed directly in the court. The vast majority of cases processed through the state conciliation system were, until very recently, domestic matters involving domestic violence, divorce, and child support.

The justice representatives, who are authorized to conciliate disputes on behalf of the state, are even less well trained and well educated than the judiciary. The majority of justice representatives are unlikely to be high-school graduates, due not to lack of native intelligence, but rather to the interruption of their education by war. Their salaries of approximately \$8 per month do not permit them to support their families, and the concept of professional standards of behavior has never been explained to them. Therefore, allegations of corruption are frequently levied against them.

The state conciliation system, like the court system, is utilized by urban Khmer, but not by persons living in the countryside. This urban-rural division does not mean that the conciliation process does not occur in the countryside, but rather that it occurs outside of the state system. Indeed, most Cambodian dispute resolution outside of Phnom Penh occurs outside of the legal system provided by the state.

This widespread preference for nongovernmental dispute resolution by conciliation arises from many different causes. Some are obvious, such as the inability of government to establish functioning dispute resolution mechanisms in the midst of civil war. Twenty years of civil war have taught the Khmer to resolve their personal disputes, though certainly not their political ones, without state assistance. Other causes are culturally-based, such as the Khmer preference for turning to monks or persons higher in the social hierarchy for resolution of disputes. Corruption must be included in any list of reasons why the Khmer do not turn to the state for dispute resolution.

In recent years the upsurge of contract disputes and civil litigation has been tremendous. It has been generated by the general confusion over property rights and the ongoing and still unfinished rewriting of law and regulations relating to real property. The privatization of industry and commerce can be expected to generate even more civil disputes. The formal legal system is still too underdeveloped to bear the increased burden of these civil disputes. The conciliation system is likewise unprepared to handle the new influx of cases. The Cambodian Government, forced to choose between developing the courts or developing the conciliation system, is leaning towards the latter alternative.

IV. Conclusion

The rebuilding of the Cambodian legal system will present both a challenge and a conundrum to the new government taking office after the May 1993 elections. The challenge is straightforward: A set of laws capable of directing the country through its transition to liberal democracy is immediately needed. Can

the government draft, enact, and promulgate them? Judges, prosecutors, and private lawyers knowledgeable in the law, honest, and capable of creating and administering a functioning system of justice are immediately needed. Can the government produce them?

The conundrum is that, even should the laws be promulgated and the legal professionals educated, a fully functioning system of justice still may not take root in Cambodia. A legal culture that views state legal institutions as legitimate and appropriate forums for dispute resolution is essential to a fully functioning system of justice. Such a legal culture is not now present in Cambodia. The Cambodian people are deeply reluctant to use state-sponsored legal forums for dispute resolution. Their reluctance is the product of dislike for adversarial dispute resolution, distrust of the state, and a strong cultural tradition of turning to monks and those higher in the social hierarchy for resolution of disputes. The situation is complicated by the fact that the higher-ups in the social hierarchy are often warlords, political faction leaders, and officials of the executive branch of government who make their decisions without reference to the law. Contempt for the law on the part of the general public results. Likewise, gifts often accompany petitions to these higher-ups. Corruption and miscarriages of justice result. In such a climate, a state-sponsored system of justice capable of engendering the respect of the Cambodian people will not easily be established.

The rule of law and a market economy are two of the cornerstones of liberal democracy. A market economy, framed by a set of laws protecting private ownership of property and private enterprise, will very likely exist in Cambodia in the near future. The question of whether the rule of law will exist in Cambodia in the near future is not so easily answered.